IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8611 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUJANSINH JUVANSINH & 4 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR PV HATHI for Petitioner(s) : 1 - 5.
MR JASWANT SHAH, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/02/2007

ORAL JUDGMENT

1. In this petition, the petitioners have challenged an order dated 29th June, 1996 passed by the Inquiry Officer as upheld by an order dated 9th June, 1998 passed by the Gujarat State Cooperative Tribunal.

2. Short facts leading to the petition are as follows :

2.1 The petitioners nos. 1 to 4 were at the relevant time elected as office bearers of one Sandhkhakhara Cooperative Society (here-in-after referred to as “the said Society”), situated at Bhavnagar. The petitioner no.5 was at the relevant time Secretary of the Society.

2.2 The society had entered into certain settlement with the employees Union and had agreed to improve upon the existing pay scales with limited retrospective effect. Pursuant to such settlement between the said society and its employees Union before the Labour Court in pending dispute, the society made certain payments of arrears of salaries and also agreed to pay revised pay to its employees.

2.3 Finding that the office bearers of the society as well as Secretary did not have the authority to enter into such settlement or to commit to pay higher salary or arrears to the employees, a charge-sheet dated 6th March, 1996 came to be issued against the petitioners by the District Registrar. It may be noted that it was on the basis of audit remarks that the said charges were levelled against the petitioners. In the charge-sheet there were as many as nine different charges alleged. However, the central

issue was that the petitioners on behalf of the society had agreed to pay the improved pay scales to the employees and also to pay limited arrears. Total payment of arrears of salary comes to approximately Rs.1,50,000/-. The petitioners denied the charges and filed reply in March 1996. They contended that there was no misapplication of the funds of the society. They relied on decision of Madras High Court in the case of **Tiruchirapalli Hirudayapuram Co-op Bank Employees Union etc.etc. v. Joint Registrar of Co-op Societies, Tiruchirapalli etc.etc.** reported in 1992 LLJ Vol.1 747 to contend that the Registrar, Cooperative Societies has no power to overrule the settlement arrived at between the parties before the Labour Court in a pending reference.

2.4 The inquiry officer conducted a detailed inquiry. Oral as well as documentary evidence was produced on record. Eventually, he passed the impugned order dated 29th June, 2006 holding all the petitioners guilty of misapplication of the funds of the society and directed that the same be refunded. The petitioners unsuccessfully appealed against the said order and Gujarat State Cooperative Tribunal by judgement dated 9th June, 1998 was pleased to reject the appeal of the petitioners.

2.5 The petitioners are therefore, before

this Court challenging the said orders in the present petition.

3. Learned advocate Shri P.V. Hathi for the petitioners submitted that orders under challenge require to be set aside. He submitted that the charges were vague and the charge-sheet did not disclose necessary particulars. He submitted that the petitioners had not committed any misfeasance nor had committed any act which could give rise to the proceedings under section 93 of the Gujarat Cooperative Societies Act(here-in-after referred to as “the said Act”). He further submitted that the authorities erred in holding the charges proved against the petitioners. He pointed out that the inquiry officer primarily held the charges proved on the ground that the petitioners had violated certain Government circulars. Such circulars according to the inquiry officer required any cooperative society to seek prior approval of the Government before granting revision in pay scales of the employees. He submitted that such circulars were never referred to in the charges much-less produced along with the charge-sheet.

3.1 He further submitted that at-least in so far as the petitioner no.5 was concerned, he was the paid Secretary of the said Society and was not a party to the resolution authorising the Chairman of the society to settle the

disputes with the employees union.

3.2 Reliance was also placed on the decision of **Tiruchirapalli Hirudayapuram Co-op Bank Employees Union etc.etc. v. Joint Registrar of Co-op Societies, Tiruchirapalli etc.etc.** (supra) to contend that the Registrar, Cooperative Society cannot overrule a settlement approved by the Labour Court.

4. On the other hand, learned AGP Shri Jaswant Shah supported the orders under challenge. He submitted that admittedly, the petitioners had not taken any permission from the authorities before implementing the higher pay scales for the employees. He submitted that despite clear circulars of the Government, petitioners agreed to pay higher wages, that too, from the back date thereby causing financial loss to the society. He therefore, submitted that necessary ingredients required to proceed application under section 93 of the said Act are very much present.

5. Having heard learned advocates appearing for the parties, I find that though in the charge-sheet it is stated that the petitioners disbursed certain amounts in favour of the employees pursuant to settlement between the society and the union, in the charge-sheet there is no mention of any of the circulars of the

Government requiring prior approval of the Government before such a settlement can be entered into. In the charge-sheet also, it is not alleged as to how the petitioners had misapplied the funds of the society.

6. Sub-section(1) of Section 93 of the said Act reads as follows :

"93. Power of Registrar to assess damages against delinquent, promoters, etc.:-

1. Where, in the course of or as a result of an audit under section 84, or an inquiry under section 86 or an inspection under section 87, or the winding up of a society, the Registrar is satisfied on the basis of the report made by the auditor or the person authorised to make inquiry under section 86, or the person authorised to inspect the books under section 87, or the Liquidator under section 110, that any person who has taken any part, in the organization or management of the society or any deceased, or past or present officer of the society has, within a period of five years prior to the date of such audit, inquiry, inspection or order for winding up, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar or a person authorised by him in that behalf may investigate the conduct of such person or persons and after framing charges against such person or persons, and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate as the Registrar or the person authorised under this section may determine, or to contribute such sum to the assets of the

society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine. “

7. From the perusal of the said provision, it becomes clear that it is open for the authorities to initiate proceedings under sub-section(1) of Section 93 of the said Act when it is found that any deceased, past or present officer of the society has misapplied or retained any money or property of the society. These powers are sufficiently wide to cover large number of cases. Before exercising of powers, however, the charges have to be established. To do so, the first and foremost requirement would be to issue a charge-sheet informing the recipient thereon about the nature of charges he is facing and the allegation that is required to be met with.

8. In the present case, I find that the charge-sheet was vague and lacked in material particulars. Nowhere has it been stated as to in any manner the petitioners had misapplied or retained the funds of the society. Admittedly, it is not a case where the petitioners were alleged to have misappropriated or retained the funds of the society. At the best, the authorities could have made out a case of misapplication of funds of the society. To do so, it was necessary for them to draw proper charge-sheet detailing the grounds on which such

allegations are sought to be sustained.

9. Having perused the charge-sheet and the order passed by the inquiry officer, I find that there is nothing to link between the charges contained in the charge-sheet and the ultimate conclusions arrived at by the inquiry officer. As noted earlier, the petitioners no. 1 to 4 as office bearers had resolved to agree to pay higher wages to the employees from certain back date. Accordingly, on behalf of the society, the dispute was settled with the union in a pending reference before the Labour Court. Pursuant to such settlement, the society made certain payments of arrears of salaries. To establish that this amounted to misapplication of the funds of the society, authorities had to lay a solid foundation and to establish the charges through the evidence on record.

10. In facts of the present case, I find that the authorities failed to do so. As noted earlier, the conclusions of the inquiry officer cannot be related to the charges levelled against the petitioners. In fact, the charges are nothing but reproduction of the audit objection. In the ultimate conclusion, the inquiry officer found that the petitioners had breached the Government circulars. Such circulars have not been referred to in the charge-sheet nor is it demonstrated as to how the salaries agreed to be paid to the

employees was not in consonance with the Government prescribed standards.

11. Considering all these aspects of the matter, I am unable to sustain the impugned orders. Additionally, the Tribunal also in my opinion erred in upholding the order of the inquiry officer. There was no material on record to establish that on account of the decision of the society, its financial condition has weakened. The arrears of salaries released by the petitioners was relatively of a small sum. Nothing has been brought on record to suggest that on account of such payment of arrears of salaries, financial position of the society would suffer irreparably. In fact, it is noted that on account of such payment of higher salaries, total profit of the society would go down. This only states the obvious. To what extent however, it would eventually affect the financial condition of the society has not been examined. In facts of this case, therefore, I find that the impugned orders need to be set aside.

12. It may be noted that the settlement was arrived at between the parties before the Labour Court. Ordinarily, therefore, there would be a presumption of the settlement having been approved by the Labour Court as just, not only qua the employees but also on overall terms and

conditions.

13. I am however, not entirely in agreement with the learned advocate for the petitioners that the decision of Madras High Court in the case of **Tiruchirapalli Hirudayapuram Co-op Bank Employees Union etc.etc. v. Joint Registrar of Co-op Societies, Tiruchirapalli etc.etc.**(supra) would apply in the present case. In that case issue before the Court was regarding the power of the Registrar to tinker with the settlement arrived at between the parties before the Labour Court.

14. I am however, in agreement with the learned advocate for the petitioners that in so far as petitioner no.5 is concerned, he was only a paid Secretary of the society. He was not part of the decision making process. He therefore, could not have been in any case hauled up for any alleged excess or overpayment.

15. In the result, petition succeeds. The impugned orders dated 29th June, 1996 passed by the Inquiry Officer and 9th June, 1998 passed by the Gujarat State Cooperative Tribunal are quashed. Rule is made absolute. No order as to costs.

(Akil Kureshi,J.)

(raghu)